

14467
No. 14467

**United States
Court of Appeals**
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

VS.

JOHN O. ENGLAND, Trustee in Bankruptcy of
the Estate of Bradford Welch, Inc., a Corpo-
ration, Bankrupt,

Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Northern District of California,
Southern Division.**

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the Southern Division of the United States District Court for the Northern District of California

No. 40,012—In Bankruptcy

In the Matter of

BRADFORD WELCH, INC., a Corporation,
Bankrupt.

CERTIFICATE AND REPORT OF REFEREE
ON PETITION FOR REVIEW OF REFEREE'S ORDER ON OBJECTION TO FEDERAL TAX CLAIM

To Honorable Michael J. Roche, United States District Judge for the Northern District of California:

I, Burton J. Wyman, one of the referees in bankruptcy of the above-entitled court and the referee primarily in charge of the above-entitled proceeding in bankruptcy, hereby respectfully certify and report:

On December 4, 1953, the following petition for review was filed in the above-entitled bankruptcy proceeding:

“Comes now the United States of America, by and through its attorneys Lloyd H. Burke, United States Attorney for the Northern District of California, Charles Elmer Collett, Assistant United States Attorney for said District, and Dan S. Morrison, Acting Associate Civil Advisory Counsel, Internal Revenue Service, and files this Petition for Review of

the Order of the Referee entered herein on or about October 29, 1953, directing that the claim filed on behalf of the United States by the Director of Internal Revenue for Federal insurance contributions taxes and withholding taxes due from the bankrupt in the amount of \$2,192.64 be allowed as a priority claim in that amount, but be disallowed as a security claim, which Order reads as follows:

“ ‘Order, Judgment and Decree That Amended Tax Claim of the United States Be Allowed in Its Entirety as a Priority Claim and Disallowed as a Secured Claim

“ ‘Whereas, it appears from the record herein that the United States, through its duly authorized agent, the Collector of Internal Revenue for the First District of California, has filed, in the above-entitled bankruptcy proceeding, its amended claim for taxes in the aggregate sum of \$2,192.64 of which said aggregate amount, the sum of \$945.37 is purported to be secured by a lien under the provisions of Sections 3670-3672, said secured claim (so far as the averments in said tax claim are concerned) being based upon the language found in Paragraph 6 of said amended tax claim, i.e., “That the United States does not hold, and has not, nor has any person by its order, or to deponent’s knowledge or belief, for its use, had or received, any security or securities for said debt, except statutory liens, or liens as above set forth” and

“ ‘Whereas, it appears from the record herein that John O. England, as trustee of the bankruptcy

estate of the above-named bankrupt, has filed, in said bankruptcy proceeding, the following objections to said amended claim:

“ “ “1. That said claim, to the extent of the sum of \$945.37, evidenced by amended proof of debt filed as aforesaid, purports to be secured by a statutory lien upon the assets of said bankrupt estate under the provisions of Sections 3670-3672 of the Internal Revenue Code, but said claim is not secured by a good and valid lien in the sum of \$945.37 or otherwise.

“ “ “2. That it does not appear from said proof of debt when said lien was recorded or effective.

“ “ “3. That your petitioner concedes that said claim in the total sum of \$2,192.64 is a claim entitled to priority of payment with other priority claims for taxes on file herein by the State of California and the City and County of San Mateo, but alleges that it is not secured by any lien, statutory or otherwise, which would give the said claim any right to payment in advance of or prior to said priority tax claims of the said State, City or County.

“ “ “Wherefore, your trustee prays that said proof of claim, as amended, be re-examined and following a hearing of the within objections an Order be made denying said claim a lien, statutory or otherwise, upon the assets of this bankrupt estate, and determining that said claim is a claim entitled to priority of payment under the provisions of Section 64(a) of the Bankruptcy Act.” and

“ ‘Whereas, it appears from the record herein, and the court so finds, that the United States never has filed any notice of the aforesaid claimed statutory lien as provided in Section 3672 of the Internal Revenue Code, and

“ ‘Whereas, it appears from the record herein, and the court so finds, that, insofar as the rights of other creditors of the bankrupt, including any rights of the hereinbefore-mentioned State of California and the City and County of San Mateo, are concerned, the aforesaid trustee, as of the date of the filing of the initial petition in bankruptcy herein, became, and now is, vested with all the rights, remedies, and powers of a creditor then holding a lien on the assets of the bankrupt, and

“ ‘Whereas, the record herein shows, and the court so finds, that at no time did the United States have any lien whatsoever upon the assets of the bankrupt, or on any part thereof, as against the other creditors of the bankrupt, including the State of California and the City and County of San Mateo, and

“ ‘Whereas, the record herein shows, and the court so concludes, that the objection of said trustee that “said claim, to the extent of the sum of \$945.37 * * * purports to be secured by a statutory lien upon the assets of said bankrupt estate under the provisions of Sections 3670-3672 of the Internal Revenue Code,” is not secured by a good and/or valid lien in the sum of \$945.37, or otherwise, and

“ ‘Whereas, the record herein shows, and the court

so concludes, that the aforesaid amended claim in the total sum of \$2,192.64 is a claim entitled to priority of payment, with other priority claims for taxes on file herein, including the State of California and the City and County of San Mateo, but that no part of said \$2,192.64 is secured by any lien, statutory or otherwise, which would, or does, give the United States any right to the payment of said amended claim, or any part thereof, in advance of, or prior to said priority tax claim of the aforesaid State, City and/or County of San Mateo, and

“ ‘Whereas, the record herein shows, that said amended claim having been re-examined at a hearing held for that purpose, as prayed for by said trustee, the court, after considering the briefs filed, on behalf of the United States, The State of California, and said trustee, and the entire record herein, concludes that (1) said amended claim of the United States should be Allowed as a priority claim in the aggregate sum of \$2,192.64, and (2) that said claim be Disallowed, as a secured claim.

“ ‘It Accordingly So Is Ordered, Adjudged and Decreed.

“ ‘Dated: October 29th, 1953.

“ ‘BURTON J. WYMAN,

“ ‘Referee in Bankruptcy.’

“ ‘The petitioner alleges that the Referee in Bankruptcy erred in the following particulars in the making of said order of October 29, 1953:

“ ‘1. The Referee in Bankruptcy erred in failing

to find, hold and order that the claim of the United States filed in the above-entitled proceeding for federal insurance contributions and withholding taxes to the extent of \$945.37, is secured by valid and existing Federal tax liens and entitled to the priority of payment accorded by sections 67b and 67c of the Bankruptcy Act as a lien claim.

“Petitioner requests that the Referee in Bankruptcy certify a record to the United States District Judge in this review consisting of the following papers in the file of the case:

“1. Referee’s Findings of Fact and Conclusions of Law and Order on Objection to claim.

“2. A summary of the evidence material to the issue introduced at hearings held before the Referee.

“3. Copies of all exhibits introduced at such hearings.

“4. Stipulation dated November 5, 1953.

“5. This Petition.

“Dated: This 4th day of December, 1953.

“LLOYD H. BURKE,

“United States Attorney;

“By /s/ CHARLES ELMER COLLETT,

“Assistant U. S. Attorney.

“/s/ DAN S. MORRISON,

“Acting Associate Civil Advisory Counsel, Internal Revenue Service.”

The circumstances, under which the filing of said petition for review came about, are as follows:

On August 22, 1952, a "First Amended Claim of United States for Taxes" was filed in the above-entitled bankruptcy proceeding. In substance, said amended claim sets forth:

"Glen T. Jamison, Collector of Internal Revenue for the First District of California, a duly authorized agent for the United States in this behalf, being duly sworn, deposes and says:

"1. That Bradford Welch, Inc., above named, is justly and truly indebted to the United States in the sum of \$2,147.95, with interest thereon as hereinafter stated.

"2. That the nature of the said debt is internal revenue taxes due pursuant to law as follows:

Nature of Tax and Period	Assessment List	Amount of Tax	Total Assessment	Together With Int. at ½ of 1% Per Mo. On Total Assess- ment Until Paid. Int. Accrued from Date Below to July 23, 1951	
Taxes Secured By Statutory Lien Under Section 3670-3672 IRC					
Social Security F. I. C.					
12-31-49 (2-50-5468)	Tax	34.74			
	Interest	.17	34.91	2.89	3- 6-50
3-31-50 (5-50-9061-2)	Tax	75.97			
	Interest	.55	76.52	5.01	6-20-50
9-30-50 (11-50-217768)	Tax		51.93	1.92	12-11-50
Withholding Tax					
12-31-49 (2-50-360300)	Tax	146.60			
	Interest	1.10	147.70	11.89	3-20-50
3-31-50 (5-50-9061-2)	Tax	201.90			
	Interest	1.51	203.41	13.32	6-20-50
9-30-50 (11-50-217768)	Tax		108.38	4.01	12-11-50
Employment Withholding Tax					
12-31-50 (2-51-8278-2)	Tax	275.76			
	Interest	2.07	277.83	5.65	3-21-51
			\$900.68	\$44.69	
	1st sub total	\$945.37			
					July 23, 1951
Taxes Entitled to Priority Under Section 64(a) Bankruptcy Act					
3-31-50 (9-51-6111-1)	Tax	174.06			
	Interest to 7-23-51	12.81	186.87		
6-30-51 (9-51-6139-1)	Tax		376.66		
9-30-51 (8-52-6340)	Tax		683.74		
			\$1,247.27		
	2nd sub total	\$1,247.27			
	Grand Total	\$2,192.64			

“3. The right to amend this claim at any time during the pendency of this bankruptcy proceeding is hereby reserved.

“4. That no part of said debt has been paid, but that the same is now due and payable at the office of the Collector of Internal Revenue at San Francisco, California.

“5. That there are no set-offs or counterclaims to said debt.

“6. That the United States does not hold, and has not, nor has any person by its order, or to deponent's knowledge or belief, for its use, had or received, any security or securities for said debt, except statutory liens, or liens as above set forth.

“7. That the said indebtedness is now due and payable; that no note or other negotiable instrument has been received for said debt or any part thereof; and that no judgment has been rendered thereon.

“8. That said debt has priority, and must be paid in full in advance of distribution to creditors, as and to the extent provided in Section 64 or Section 659 of the Bankruptcy Act, Section 3466 of the Revised Statutes, or other applicable provisions of law. Attention is also called to the provisions of Section 3467 of the Revised Statutes, with respect to the personal liability of every executor, administrator, assignee or the other person who fails to pay the claims of the United States in accordance with their priority.”

On October 2, 1952, the following verified objections to said claim were filed in said bankruptcy proceeding.

“Now comes John O. England, Trustee in Bankruptcy of the estate of the above-named bankrupt, and objecting to the claim of the United States of America filed herein on its behalf by the Collector of Internal Revenue for the First District of California on August 22, 1952, in the sum of \$2,192.64, as grounds of objection alleges:

“1. That said claim, to the extent of the sum of \$945.37, evidenced by amended proof of debt filed as aforesaid, purports to be secured by a statutory lien upon the assets of said bankrupt estate under the provisions of Sections 3670-3672 of the Internal Revenue Code, but said claim is not secured by a good and valid lien in the sum of \$945.37 or otherwise.

“2. That it does not appear from said proof of debt when said lien was recorded or effective.

“3. That your petitioner concedes that said claim in the total sum of \$2,192.64 is a claim entitled to priority of payment with other priority claims for taxes on file herein by the State of California and the City and County of San Mateo, but alleges that it is not secured by any lien, statutory or otherwise, which would give the said claim any right to payment in advance of or prior to said priority tax claims of the said State, City or County.

“Wherefore, your trustee prays that said proof of claim, as amended, be re-examined and following a hearing of the within objections an Order be made denying said claim a lien, statutory or otherwise, upon the assets of this bankrupt estate, and determining that said claim is a claim entitled to priority of payment under the provisions of Section 64(a) of the Bankruptcy Act.

“/s/ JOHN O. ENGLAND,

“Trustee.

“STANLEY M. McLEOD,

“Attorney for Trustee.”

[Verification omitted for sake of brevity.]

On October 22, 1952, a hearing on said amended claim and said objections was had before the undersigned referee in bankruptcy, at which time the following occurred:

“The Referee: Matter of Bradford Welch, Inc.

“Mr. McLeod: That is ready. I don’t know just how we should proceed here. But, your Honor will recall that the trustee filed his First and Final Account herein on July 23rd. At that time, the Collector’s Office orally informed us they asserted a statutory lien, although the proof of claim which they filed, I think sometime in May, for \$1592.00 and some odd cents, did not indicate on its face that there was such a lien.

“The Referee: Well, they have a blanket clause in there, haven’t they?

“Mr. Anderson: Yes. For the record, that is Clause No. 6, which says:

“‘That the United States does not hold, nor has any person by its order, or to Deponent’s knowledge or belief, for its use, had or received, any security or securities for said debt, except statutory liens, or liens as above set forth.’

“Mr. McLeod: But, as I say, there were no liens above set forth. So, your Honor continued it to this date, and, I think, gave permission to amend the proof of claim, and just to make the matter more interesting, I filed objections after the amended claim was filed. Some are rather general, but some I should like to advance.

“The Referee: When did you file them, Mr. McLeod?

“Mr. McLeod: When did I file them?

“The Referee: Yes.

“Mr. McLeod: October 2nd. The notice of the hearing was filed a little bit later.

“The Referee: I will get it in here.

“Mr. McLeod: One objection I raised was that it does not appear from the amended proof when the lien was either assessed, reported, or effected. I think the date should be set out for the benefit of the trustee and the Court, to determine whether the assessment was made prior to the bankruptcy or afterward. I believe there is some authority that the Government may make a final assessment even after bankruptcy proceedings are instituted.

“The Referee: They may perfect a lien after bankruptcy.

“Mr. McLeod: They may perfect a lien after bankruptcy, that is what I mean, if the assessment has been made before that.

“The Referee: The assessment, I think, would have to be made before.

“Mr. McLeod: Can you tell us?

“Mr. Anderson: That is right, your Honor, and with respect to notice of the date of assessment, on the face of the claim, there is in the Government’s hieroglyphics, the matter in parentheses, and the first number refers to the month; the second to the year. In other words, 2-50 means February, 1950. That is the only indication on the face of the claim as to when the assessment was made.

“The Referee: Don’t you think that some day someone is going to object to the hieroglyphics?

“Mr. Anderson: They have, your Honor. I was reading a case in which that occurred. There, no reference had been made in the proof of claim that we held statutory liens, but the District Court on review of the Referee’s decision allowing our claim, the District Court upheld that and based it on the fact that the words ‘statutory lien’ were in the claim itself and that was sufficient to put the trustee on notice. The situation I refer to arises in a West Virginia decision of April 15, 1952, *In re Mannington Pottery Co.* The only citation I have is *Prentiss Hall Tax Service*, Paragraph 72, Page 584.

“The Referee: I will look into that. Personally my own view is that is not sufficient in the face of

objections. Of course, you can get by with it if there is no objection.

“Mr. Anderson: I wondered, your Honor, in view of the objections having been made, if I might make an offer in evidence of the certificates to show the actual dates the assessments were made and received here?

“The Referee: Were they filed in time?

“Mr. Anderson: No question about that.

“The Referee: They are very careful about that, because I have one now I am working on.

“Mr. Anderson: In which we did not do that.

“The Referee: I don't know whether they are right or wrong. I am just working on it.

“Mr. McLeod: I won't object to the introduction of such evidence.

“Mr. Anderson: On behalf of the Collector, then, your Honor, I should like to introduce in evidence the Certificate of Assessments and Payments which cover the taxes in the proof of claim under the heading, ‘Taxes secured by statutory lien under Sec. 3670-3672 Internal Revenue Code.’ These certificates show the dates the assessment were made, the dates the assessments were received and notice and demand was made upon the taxpayer with respect to those respective taxes.

“The Referee: Respondent's Exhibit No. 1.

“(Three Certificates of Assessments and Payments were admitted in evidence as Respondent's Exhibit No. 1.)

“Mr. Anderson: I might add that no Notice of

Lien was filed with the Office of the County Recorder, so far as I know, on these taxes.

“The Referee: Did these affect personal property or real property?”

“Mr. Anderson: As I recall, there was only personal property in the estate.

“Mr. McLeod: That is all, and some of the personal property was proceeds of accounts receivable. Whether or not they were in existence is questionable, in my mind. All of the assets of the estate consisted of personal property, the major item being stock in trade and the balance, certain accounts receivable, and some fixtures of no value.

“Mr. Anderson: For the record, your Honor, I will stipulate to that statement, so the record is clear as to the type of property. I might point out with respect to the creation of accounts receivable, that the Federal tax lien does attach to after-acquired property. The Glass City Bank case, decided by the Supreme Court——

“The Referee: I remember that case.

“Mr. Anderson: I think we have good authority there. Some others may be a little shaky.

“But, the position of the Government, your Honor, is simply this: That under these circumstances, where there is no other creditor that is involved that has the status of a judgment creditor—and we claim the trustee in bankruptcy is not a judgment creditor within the meaning of Sec. 3672 of the Code—we take the position that our lien is created at the time the assessment list is received in California and is perfected by giving notice and

demand to the taxpayer. That lien, then, is good as to all parties, except, as I say, judgment creditors.

“The Referee: Well, hasn’t the Ninth Circuit really ruled that the trustee is a judgment creditor? Not in a tax matter, though.

“Mr. Anderson: Not that I am aware of. It might have arisen.

“The Referee: Haven’t they held that with reference to homesteads? I am not sure whether they held it outright on that or not, but they went awfully close to it if they did not.

“Mr. Anderson: Well, I don’t believe they have, Judge, on the question with respect to the interpretation of Sec. 3672.

“The Referee: The only way you might get around that, you say it was a bankruptcy case, and they have gone around the Revenue sections in bankruptcy cases, for instance, on priority.

“Mr. Anderson: Yes.

“The Referee: So, you are bound by the priority there and not any outside Revenue law.

“Mr. Anderson: I have at least one case concerning the status of a trustee in bankruptcy. That was not a Ninth Circuit case, unfortunately. It was in the Sixth Circuit, Taylorcraft Aviation Corp., Sixth Circuit, 1948; 168 Fed. (2^d) 808. That case discusses the problem of whether or not the trustee is a judgment creditor within the meaning of Sec. 3672 and concludes that he is not. That is our authority for taking the position I am today. I then believe that if the Court should follow that argument and find we do have a valid lien which arose and was com-

pleted prior to the filing of the petition, I don't know whether we can raise the point whether that is valid in bankruptcy. I believe it is. I have authorities I would like to cite, if that is the issue before the Court.

"The Referee: How about that, Mr. McLeod?

"Mr. McLeod: I am inclined to agree that if it is a valid statutory lien, that the Bankruptcy Act must recognize it.

"Mr. Anderson: Even with respect to personal property, under Sec. 67c, we would be subordinate, and I concede we are subordinate to costs of administration and labor claims.

"Mr. McLeod: Yes.

"Mr. Anderson: The only possible advantage we could have would be over the State of California and the County of San Mateo.

"The Referee: They having no liens.

"Mr. McLeod: They have no liens, though I did give a couple of promises to them——

"The Referee: Has the State of California been notified on this?

"Mr. Anderson: I don't believe so. I raised this by objecting to the trustee's Final Account.

"Mr. McLeod: No one was present.

"The Referee: The only thing is, I don't want to put the trustee in the position of having trouble with the State of California afterwards.

"Mr. McLeod: Well, I think that would be covered—well, I don't know that it would either—but, I would refer to Sec. 67c.

"The Referee: 67?

“Mr. McLeod: 67c sub-paragraph (2), where it says:

“ ‘Though valid under subdivision b of this section, statutory liens, including liens for taxes or debts owing to the United States or to any State or subdivision thereof, on personal property, not accompanied by possession of such property——’

shall not be valid against the trustee.

“The Referee: My first thought is that you should clear that up between the wording of the two sections, why they have got one section that is practically positive and another that qualifies it so.

“Mr. McLeod: Really, I don't know what they mean. I have studied both of those sections.

“Mr. Anderson: I have no trouble that way. The Bureau pretty well decides what it means so far as I am concerned. Mr. Lafferty and I have argued that at some length before another court, and I believe he had the same sort of case before you with Mr. Stokes.

“The Referee: I have one now. I believe the briefs cover that point. Maybe I will have to decide that other case before I decide this. The only thing is, has the State filed in this?

“Mr. McLeod: Yes, I think the Department of Employment has a claim and the Board of Equalization; the County of San Mateo, the Franchise Tax Board, and the City of San Mateo. We have all those in priority claims along with the Collector.

“The Referee: Let’s see now. They are claiming priority. You are claiming under a lien, aren’t you?

“Mr. Anderson: Yes.

“The Referee: And claiming, to the extent of your lien, that you have a secured claim and had it at the time of the filing of the petition. Now, would they have any right? Do they have one of those blanket provisions in one of their claims?

“Mr. Anderson: If they have reduced their claim to a lien before your Honor—I don’t want to be in the position of arguing their case—I think they have the status of a judgment creditor, when they have taken action to reduce their claim to a lien.

“The Referee: I had quite a conference with Mr. Lafferty. I have been trying to get them to change the form of their claim. Yours is of a type different from theirs. But, they state right out they claim under Section 64 of the Bankruptcy Act and throw in the lien proposition.

“Mr. Anderson: Something like our amended claim that was drawn under your instructions here.

“The Referee: Yes. And if you had seen their claim, you would not have to worry about them.

“Mr. McLeod: No. I think the trustee will be protected in any condition that arises from other tax agencies. I don’t see how they could come in and say he has been remiss or at fault.

“The Referee: As long as you are in the position of a judgment creditor, then you would represent all the creditors, wouldn’t you?

“Mr. McLeod: Yes.

“The Referee: Then, it would be a question of whether taxes with a lien or taxes without a lien, but subject to the rights of the trustee, would have any right to contest it with the Government.

“Mr. McLeod: As I say, the money, the amount in this, it just happens in this estate, does not amount to very much, because, if the United States were reduced to merely a priority status, not a secured status, you would pick up almost all, except for the amended claim.

“The Referee: Why not compromise the matter?

“Mr. McLeod: I mentioned that to Mr. Anderson earlier.

“The Referee: Can’t you do it without getting a ruling in the matter? I have one in the Davanis matter.

“Mr. Anderson: I would like to ask you for a ruling here. The question of appeal can be decided by the Attorney General on the basis of the amount involved. This does not seem to me to be a case that would be appealed in view of the amount. That is just my guess, but we have had situations like this arising in the past right along, where we have claimed a lien but no weight was given to it by the trustee. That being so, when I had this opportunity that I saw coming up, I did want to raise it so a ruling would be made in this court as to whether or not we should amend our claim to set forth we had priority or not. That is why, if I could, I ask this Court to rule upon the matter for our guidance in the Collector’s Office and we can govern ourselves accordingly, and there may come a time when we

will want to carry the substantive question up on appeal. That would be worthwhile to all parties concerned for the present, because of the doubts I realize are in your mind. I would like a ruling on whether or not we have a lien.

“The Referee: Haven’t you got that covered in the Davanis matter, in which you will probably take a review if it is against you and they will probably take a review if it is in your favor?

“Mr. Anderson: I don’t think so, your Honor. I believe that claim you have before you is one where we failed to file in time and defective on that basis, you see. I think our position there would be that the filing of a claim which is null and void cannot serve to stop us from asserting our lien. I think that is a different situation there. That is not true here.

“The Referee: Of course, off-hand, I will say to you, Mr. Anderson, I don’t think, if you file a claim in the court and that claim does not meet the requirements, and you have come in under a petition to intervene, you practically set up a different situation; that is, if your petition comes after the date for filing claims. That is my off-hand opinion. I have not decided that yet, because I have not gone into that angle.

“Well, if you want to rest on this one case, I will let you gentlemen brief it.

“Mr. Anderson: All right.

“The Referee: If you think this is a case where you can get a ruling squarely on that point.

“Mr. Anderson: I think, really, there are two points here:

“One: Whether or not the form of the claim is correct;

“Number 2: Whether we have a claim assertable against other priority creditors.

“The Referee: That would raise the question of the trustee’s position.

“Mr. Anderson: The trustee being a judgment creditor. Now, that is another point I don’t believe has been decided in the Ninth Circuit to my knowledge.

“The Referee: Well, how many days do you want, if you are the trouble maker here? Aren’t you?

“Mr. Anderson: All right.

“The Referee: Have you made a pretty good research on it already?

“Mr. Anderson: Would you like to bring the City and County and State in on this? I know Mr. Lafferty is interested in this problem.

“The Referee: Why not do that? I think you could just do it by correspondence, to see if they are interested.

“Mr. McLeod: Yes. I will notify them on the basis of the argument.

“The Referee: Suppose you get up a joint letter and send it to them? And, then, suppose I give you 20 days, you 20, and you 10?

“Mr. Anderson: All right.

“The Referee: That will give you time to get your letter out and get in the brief. If anybody gets

stuck, come in and let me know. It will probably be some time. I don't believe in deciding these things without looking into them. There are numerous problems involved. Every time I get in one, it does not stop with what appears on the surface. It may be the trouble is in my mind. What looks like a simple matter, when I get into it, gets complicated. Maybe I am over careful.

"All right. Submitted that way. But, I think you better send a letter to Mr. Lafferty, and I think he is the only one you need to notify.

"(Submitted: 20-20-10.)"

After the briefs had been filed and considered by the undersigned referee in bankruptcy, the order complained of and set forth in the aforesaid petition for review was signed and caused to be filed by the undersigned referee in bankruptcy.

Papers Handed Up Herewith

Handed up herewith, as parts of this certificate and report, are the following papers:

1. The aforesaid "1st Amended Claim."
2. The aforesaid "Objections."
3. The aforesaid "Order, Judgment and Decree," etc.
4. The aforesaid "Petition for Review," etc.
5. "Trustee's Opening Brief."
6. "Opening Brief for the State of California."

7. "Memorandum on Behalf of Collector of Internal Revenue."

8. "Trustee's Closing Brief."

9. Letter, dated December 9, 1952, from Office of Attorney General.

10. Reporter's Transcript, of October 22, 1952, filed February 18, 1954.

11. Envelope Containing Exhibit.

Dated: March 11th, 1954.

Respectfully submitted,

/s/ BURTON J. WYMAN,

Referee in Bankruptcy.

[Endorsed]: Filed March 11, 1954.

In the United States District Court for the Northern District of California, Southern Division

No. 40,012—In Bankruptcy

In the Matter of

BRADFORD WELCH, INC., a Corporation,
Bankrupt.

ORDER CONFIRMING ORDER
OF REFEREE

It Is Ordered that the order of the Referee in Bankruptcy entered in the above-entitled cause on October 29, 1953, granting the amended tax claim of the United States in its entirety as a priority claim and disallowing it as a secured claim, be and the same hereby is Confirmed.

Dated: May 25th, 1954.

/s/ MICHAEL J. ROCHE,
Chief Judge, U. S. District
Court.

[Endorsed]: Filed May 25, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT
OF APPEALS

Notice is hereby given that the United States of America, claimant in the above-entitled bankruptcy proceeding, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of the United States District Court for the Northern District of California, Southern Division, dated May 25, 1954, in the above-entitled proceeding confirming the Order of the Referee in Bankruptcy entered October 29, 1953, granting the amended tax claim of the United States in its entirety as a priority claim and disallowing it as a secured claim.

LLOYD H. BURKE,
United States Attorney.

By /s/ CHARLES ELMER COLLETT,
Assistant U. S. Attorney.

[Endorsed]: Filed June 24, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF THE CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibit, listed below, are the

originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

First amended claim.

Objections of trustee to claim of United States of America.

Petition for review of referee's order on objection to federal tax claim.

Order, Judgment and decree that amended tax claim of the United States be allowed in its entirety as a priority claim and disallowed as a secured claim.

Order confirming order of referee.

Notice of Appeal.

Designation of record on appeal.

Respondent U. S. exhibit No. 1.

Reporter's transcript of hearing of Oct. 22, 1952.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 2nd day of August, 1954.

[Seal]

C. W. CALBREATH,
Clerk.

By /s/ WM. C. ROBB,
Deputy Clerk.

[Endorsed]: No. 14,467. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. John O. England, Trustee in Bankruptcy of the Estate of Bradford Welch, Inc., a corporation, bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 2, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,467

UNITED STATES OF AMERICA,

Appellant,

vs.

JOHN O. ENGLAND, Trustee in Bankruptcy of
ESTATE OF BRADFORD WELCH, INC., a
Corporation, Bankrupt,

Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD ON APPEAL

Pursuant to Rule 17, paragraph 6, of the Rules of Practice of this Court, Appellant hereby files the following Statement of Points and Designation of Record on Appeal:

I.

Appellant hereby adopts the Designation of Record on Appeal hereto filed with the Clerk of the United States District Court for the Northern District of California, Southern Division, as his Designation of the Record on Appeal in this Court.

II.

Appellant intends to rely on the following points in this proceeding:

1. The federal tax lien created by sections 3670-3672 of the Internal Revenue Code (Title 28 U.S.C.) is valid from the date the assessment list is received

by the Collector or Director of Internal Revenue as to all persons other than a "mortgagee, pledgee, purchaser, or judgment creditor" without filing a notice of tax lien.

2. A trustee in bankruptcy is not a "judgment creditor" within the meaning of section 3672, *supra*, by virtue of section 70(c) of the Bankruptcy Act, which confers on the trustee as of the date of bankruptcy "all the rights, remedies and powers of a creditor then holding a lien."

3. Since the tax liens in this proceeding arose prior to the date of bankruptcy, the claim of the United States constitutes a preferred claim under section 67(c) of the Bankruptcy Act, rather than a mere priority claim under section 64 of the Bankruptcy Act.

LLOYD H. BURKE,

United States Attorney.

By /s/ CHARLES ELMER COLLETT,

Assistant U. S. Attorney.

/s/ DAN S. MORRISON,

Attorney, Office of the Regional Counsel, Internal Revenue Service.

[Endorsed]: Filed August 10, 1954.